Filed 7/27/09 In re J.H. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.H., Defendant and Appellant.	E046740 (Super.Ct.No. J222771) OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Knish, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

John F. F. Bovee, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Jeffrey J. Koch and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

A juvenile wardship petition was filed alleging that defendant and appellant J.H. (minor) recklessly caused a forest fire. (Pen. Code, § 452, subd. (c).) A juvenile court found the allegation to be true. The court declared the offense to be a misdemeanor and placed minor on summary probation. The court did not declare minor a ward of the court. On appeal, minor contends there was insufficient evidence to support the court's true finding. We affirm.

FACTUAL BACKGROUND

On July 27, 2008, Officer Thomas Gates was on patrol when he observed a fire in an open field. He saw a male standing in the middle of the road, approximately 15 feet from the fire, holding a camera phone. The male appeared to be taking a picture of the fire. Officer Gates saw two other males standing on the sidewalk about 30 feet from the fire. One of them was minor. Upon seeing Officer Gates's patrol car, all three subjects started running. The male with the camera phone ran westbound, and minor and the other male ran eastbound. The officer first apprehended the male with the camera phone and placed him in custody. Officer Gates called for backup, and then caught minor and the other male and arrested them. The officer searched minor. Minor was wearing shorts but did not have anything in his pockets. Officer Gates transported minor to juvenile hall.

Upon arriving at juvenile hall, minor asked Officer Gates, "Sir, may I please take the lighter out of my shoe?" He then kicked off his left shoe, and Officer Gates picked up the shoe and removed a lighter from it. Officer Gates testified that, when he searched

minor, he did not find any cigarettes or marijuana on him, or anything that would require the need for a lighter. He also testified that the lighter would have easily fit in the pocket of minor's shorts.

Jason Moore, a firefighter and arson investigator, was dispatched to the scene of the fire. He conducted an area investigation and found that some light brush had been burned. Moore opined that the fire was intentionally set. He testified that a lighter, such as the one found on minor, was capable of creating the fire. Moore conducted a thorough search of the area to look for anything that could have caused the fire. He did not find any matches or lighters or anything that could have caused it.

ANALYSIS

There Was Sufficient Evidence to Support the Court's True Finding

Minor contends the prosecution did not present sufficient evidence to support the true finding that he caused a fire, either directly or as an aider and abettor. We disagree.

A. *Standard of Review*

"'The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]' [Citation.] In considering the sufficiency of the evidence in a juvenile proceeding, the appellate court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the

evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]' [Citations.]" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.) Circumstantial evidence may be sufficient to prove a defendant's guilt beyond a reasonable doubt. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) "The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.]" (*Ibid.*)

B. *The Court's Finding*

In finding the allegation to be true, the court considered the word "the" in minor's statement to Officer Gates, "May I please remove the lighter," to be significant. The court also noted that carrying a lighter in a shoe seemed to be something that one would never do "unless there were a real reason for it." The court did not think minor "just had the lighter because [it was] in his shoe." The court stated the only other reasonable alternative was that one of the other males set the fire and then gave minor the lighter. Minor's counsel interjected and argued that the prosecution's theory was that minor was the principal who set the fire and that the court could not "come up with a second theory of aider and abet[o]r." The court stated it had to look at the evidence to see if there was evidence of guilt beyond a reasonable doubt. The court asserted it would be unreasonable to find that minor had nothing to do with the fire but somehow ended up with the lighter. The court then found the allegation to be true.

C. *The Evidence Was Sufficient*

Minor argues that the evidence did not support a true finding because there was no direct evidence he set the fire. We note that "'[t]he very nature of the crime of arson ordinarily dictates that the evidence will be circumstantial. [Citation.]' [Citation.]" (*People v. Solis* (2001) 90 Cal.App.4th 1002, 1010.) Consequently, the lack of an eyewitness placing minor at the scene or other direct evidence to establish his guilt does not render the court's true finding invalid for lack of sufficient evidence. (*People v. Maler* (1972) 23 Cal.App.3d 973, 983.)

The prosecution here presented sufficient circumstantial evidence to establish that minor recklessly caused or started the fire. There was no dispute that minor was at the scene, 30 feet away from the fire. The evidence showed he had a lighter in his possession, which he was concealing in his shoe, even though he was wearing shorts with pockets that could have held a lighter. Significantly, minor was not carrying anything else that would require a lighter. The arson investigator opined the fire was intentionally set. However, there were no incendiary devices found in the area surrounding the fire that could have caused it. Additionally, the probation report stated that, during the course of the investigation, it was determined that minor was responsible for starting the fire. The other two males who were present at the scene provided statements that minor lit the fire. Moreover, minor took off running when he saw the police officer's car, which indicated a consciousness of guilt. Therefore, we conclude there was sufficient evidence that minor set the fire with the lighter.

In the alternative, there was ample evidence that, even if minor did not directly set or cause the fire, he aided and abetted in causing the fire. "[O]ne may be liable when he or she aids the perpetrator of an offense, knowing of the perpetrator's unlawful purpose and intending, by his or her act of aid, to commit, encourage, or facilitate commission of the offense . . . ." (*People v. Montoya* (1994) 7 Cal.4th 1027, 1039.) "Factors to be considered by the trier of fact in determining 'whether one is an aider and abettor include presence at the scene of the crime, failure to take steps to attempt to prevent the commission of the crime, companionship, flight, and conduct before and after the crime.' [Citation.]" (*People v. Garcia* (2008) 168 Cal.App.4th 261, 273.) The evidence here showed that minor was standing at the scene, approximately 30 feet away from the fire, along with another male. A third male was standing approximately 15 feet from the fire, apparently taking a picture of the fire with a camera phone. Upon seeing Officer Gates's patrol car, all three subjects started running. Minor admitted to the probation officer that he was friends with the other two males. Furthermore, minor had a lighter concealed in his shoe. Thus, even if minor himself did not set the fire, the only other reasonable inference was that one of the other males set the fire and gave the lighter to minor to hide. As the court stated, it would be unreasonable to find that minor had nothing to do with the fire but somehow ended up with the lighter.

Viewing the record in the light most favorable to the judgment below, as we must, we conclude there was sufficient evidence to support the court's true finding.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

MCKINSTER
J.

KING
J.